MISSOURI SUPREME COURT

Supreme Court No. SC85091

State ex rel. Rocky LaChance,

Petitioner,

vs.

Michael Kemna, Superintendent
and
Jeremiah Nixon, Attorney General,

Respondent.

PETITIONER'S
Opening Brief

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JURISDICTIONAL STATEMENT

On April 1, 2003, this Court issued its alternate writ of mandamus to the Department of Corrections ordering it to show cause why it should not modify the sentences of Rocky LaChance. The Department of Corrections filed its response to the Court order and this Court ordered full briefing. This case is properly before this Court as this Court has jurisdiction under Mo. Const. art. V, §4.

STATEMENT OF FACTS

In 1996, the St. Louis County Prosecuting Attorney charged Rocky LaChance, a seventeen year-old, in three cases. Case 96CR1022 involved ten counts of stealing a motor vehicle; case 96CR1405 involved one count of stealing a motor vehicle, one count of attempting to steal a motor vehicle, and one count of stealing over $150; case 96CR1602 involved one count of first degree tampering. (Guilty plea transcript found in appendix at A41-45). The Honorable James R. Hartenbach presided over Mr. LaChance's consolidated guilty plea hearing where he pleaded guilty to all counts in the three cases. (Id.). The State recommended concurrent seven year sentences on all counts in all cases. (Id. at A55). Mr. LaChance understood, however, that the State's recommendation did not bind the Court. (Id. at A55-56). After accepting the guilty pleas on all counts, the Court orally sentenced Mr. LaChance as follows:

96CR1022: Seven years for all ten count all concurrent with each other;

96CR1602: Seven years on sole count concurrent with 96CR1022;

96CR1405: Three years on all three counts concurrent with each other but consecutive with 96CR1022 and 96CR1602.

(Id. at A58-59). Therefore, for all intents and purposes, the Court sentenced Mr. LaChance to ten years imprisonment.[1]

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The Court also sentenced Mr. LaChance to the 120 day Missouri Regimented Discipline Program under §217.378, RSMo 2002, but he did not successfully complete the program so he had to serve the actual sentences.

The Court then explained how it intended the sentences to run in relation to prior sentences entered by Judge Burger in the St. Louis City Circuit Court. The Court explained that its sentences were to aggregate with the St. Louis City sentences to equal thirteen total years imprisonment. (Id. at A60). The Court was adamant that the "record has to be complete and replete with your understanding that you're going up there [prison] with a thirteen year sentence. You start with her three, and I back it up with ten and put it on top of hers, that's a total of thirteen years...." (Id. at A60-61). "[Y]ou understand if you don't successfully complete the [Regimented Discipline] program you're looking at thirteen, not three and not [seven]; okay?" (Id. at A61). "And if you are released after a hundred twenty days and placed back out on the street, that you're backing up a thirteen year sentence, not a three-year sentence, not a seven year sentence; do you understand that?" (Id.). "As a result of those pleas of guilty I sentenced you to a bunch of sevens and three threes to run consecutively with the sevens for a total of ten years, to be run consecutively to the three years you received in the City of St. Louis ...." (Id. at A62-63). "If you get out and screw up – I'm trying to tell you on the record you're looking at thirteen years ... then get your act together or you're going to go back and do the thirteen." (Id. at A65).

It is therefore clear that the Court sentenced Mr. LaChance to ten years imprisonment in the St. Louis County cases to be served with the St. Louis City sentences so as to aggregate a total of thirteen years.

The St. Louis City Circuit Court had previously sentences Mr. LacChance in two cases. Case number 951-2736 consisted of one count of tampering in the first degree and one count of tampering in the second degree; case number 961-349 consisted of five counts of stealing a motor vehicle. (St. Louis City judgments found in appendix at A19-33). The Honorable Joan Burger sentenced Mr. LaChance as follows:

951-2736: Seven years on one count and a concurrent one year on the other count;

961-349: Three years on all five counts concurrent with each other and concurrent with the sentences in 951-2736[2].

(Id.).

Therefore, to effectuate the oral thirteen year aggregate sentences, the St. Louis County Circuit Court should have run its sentences (10 years) concurrently with the sentences in 951-2736 (seven years) but consecutively with the sentences in 961-349 (three years). This is what Mr. LaChance expected and what the St. Louis County Circuit Court orally sentenced him to.

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[2] As with the St. Louis County sentences, the St. Louis City sentences were to be served pursuant to the 120 day Missouri Regimented Discipline Program in §217.378, RSMo 2002.

Unfortunately, the written judgments did not correspond to the oral sentences. In fact, the written judgments were internally inconsistent. The written judgment in 96CR-1022 indicated that its seven year terms were to run concurrently with the sentences in 96-1602 (7 years) but consecutively with the sentences in 96-1405 (3 years) and 951-2736 (7 years) and 961-349 (3 years) for a total term of seventeen years.[3] (Judgment in 96CR-1022 found in appendix at A34-36). The written judgment in 96CR-1405 reads the same way. (Judgment 96CR-1405 found in appendix at A37-38). The written judgment in 96CR-1602, however, leads to a very different conclusion. It reads that all sentences in all cases should run concurrently for an aggregate of seven years. (Judgment in 96CR-1602 at A39-40).

This Court is asked to determine the length of Mr. LaChance's sentence. Is it the seven years in judgment 96CR-1602 or is it the thirteen years in the oral sentencing or is it the seventeen years in the judgments in 96CR-1022 and 96CR-1405?

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[3] There appears to be no argument that the sentences in 951-2736 and 961-349 should run concurrently with each other so the aggregate of those two sentences is seven years and not ten years.

POINT RELIED ON

MR. LaCHANCE IS ENTITLED TO A WRIT OF MANDAMUS REQUIRING THE DEPARTMENT OF CORRECTIONS TO MODIFY ITS INTERNAL RECORDS TO SHOW THAT MR. LaCHANCE WAS SENTENCED TO AN AGGREGATE OF THIRTEEN YEARS IMPRISONMENT RATHER THAN SEVENTEEN YEARS IMPRISONMENT BECAUSE A COURT'S ORAL PRONOUNCEMENT OF SENTENCE CONTROLS OVER A MATERIALLY INCONSISTENT WRITTEN JUDGMENT IN THAT THE TRIAL COURT'S ORAL PRONOUNCEMENT OF SENTENCE WAS FOR THIRTEEN YEARS AS OPPOSED TO THE WRITTEN JUDGMENTS OF EITHER SEVEN OR SEVENTEEN YEARS. ALTERNATIVELY, THE DEPARTMENT SHOULD ENFORCE THE SEVEN YEAR JUDGMENT RATHER THAN THE SEVENTEEN YEAR JUDGMENT UNDER THE RULE OF LENITY.

***State v. Young*, 969 S.W.2d 362, 364 (Mo.App. 1998)**

***State v. Johnson*, 864 S.W.2d 449, 451 (Mo.App. 1993)**

***State v. Hargrave*, 915 S.W.2d 387, 391 (Mo.App. 1996)**

***State ex rel. Murphy v. Missouri*, 873 S.W.2d 231 (Mo. banc 1994)**

Section 557.036.1, RSMo 2002

Section 217.305

ARGUMENT

MR. LaCHANCE IS ENTITLED TO A WRIT OF MANDAMUS REQUIRING THE DEPARTMENT OF CORRECTIONS TO MODIFY ITS INTERNAL RECORDS TO SHOW THAT MR. LaCHANCE WAS SENTENCED TO AN AGGREGATE OF THIRTEEN YEARS IMPRISONMENT RATHER THAN SEVENTEEN YEARS IMPRISONMENT BECAUSE A COURT'S ORAL PRONOUNCEMENT OF SENTENCE CONTROLS OVER A MATERIALLY INCONSISTENT WRITTEN JUDGMENT IN THAT THE TRIAL COURT'S ORAL PRONOUNCEMENT OF SENTENCE WAS FOR THIRTEEN YEARS AS OPPOSED TO THE WRITTEN JUDGMENTS OF EITHER SEVEN OR SEVENTEEN YEARS. ALTERNATIVELY, THE DEPARTMENT SHOULD ENFORCE THE SEVEN YEAR JUDGMENT RATHER THAN THE SEVENTEEN YEAR JUDGMENT UNDER THE RULE OF LENITY.

Standard of review: A writ of mandamus is appropriate when a court or tribunal has exceeded its jurisdiction or authority. The writ will lie to compel the court or tribunal to do that which it is obligated to do. As such this Court views the propriety of issuing the writ de novo. *State ex rel. Public Housing Agency v. Krohn,* 98 S.W.3d 911, 913 (Mo.App. 2003).

There can be little debate that if there is a material discrepancy between the oral pronouncement of sentence and the written judgment, the oral pronouncement controls. *See, e.g., State v. Young*, 969 S.W.2d 362, 364 (Mo.App. 1998); *State v.*

Johnson*, 864 S.W.2d 449, 451 (Mo.App. 1993); *State v. Hargrave*, 915 S.W.2d 387, 391 (Mo.App. 1996). This is so because a judgment derives its force from the court's judicial act of pronouncing the sentence in front of the defendant rather than from the court's ministerial act of memorializing the sentence in a written judgment. *Id.

In this case, the material discrepancy is obvious. The St. Louis County Circuit Court sentenced Mr. LaChance to ten years imprisonment that should run with the St. Louis City sentences to aggregate thirteen years imprisonment. That was the oral pronouncement of sentence. The written judgments show two possible results. Either Mr. LaChance was sentenced to a total of seven years under 96CR-1602 or he was sentenced to a total of seventeen years under 96CR1022 and 96CR1405.

The Department of Corrections (the subject of this Court's alternative writ of mandamus) has chosen to interpret the St. Louis County sentences to impose the longest possible prison term on Mr. LaChance (17 years). There is no disciplined reason for this arbitrary decision.

The sentencing court (and not the Department) "shall decide the extent or duration of the sentence." §557.036.1, RSMo 2002. This includes the power to decide if its sentences will run concurrently or consecutively to other prior imposed sentences. *Young*, 969 S.W.2d at 363-64. If this Court finds, and it should, that the St. Louis County Circuit Court's oral pronouncement of sentence mandates a thirteen year imprisonment term, *nothing* prevents the Department from correcting its internal records to reflect the thirteen year sentence. The Department has no

authority to imprison someone for longer than the courts demand. *See, e.g., State ex rel. Murphy v. Missouri,* 873 S.W.2d 231, 232 (Mo. banc 1994) (writ of mandamus proper to compel the executive to perform its duty to credit allowable jail time); *State ex rel. Lightfoot v. Schriro,* 927 S.W.2d 467, 469 n.2 (Mo.App. 1996)(same holding).

The Department is not restricted to the written judgment when interpreting the length of sentence. The version of §217.305 in effect when Mr. LaChance was delivered to the Department provided that prisoners must be accompanied by, at a minimum, "a certified copy of the sentence," and "all other judgment, sentencing and commitment documents authorized by the court ...." The statute placed no limitations on the documents that the Department can use to interpret the length of the sentence. In fact, the statute does not even require that the written judgment be delivered to the Department. It requires that a "certified copy of the sentence" be delivered but that can take any form. The "judgment" is put on even footing with any "other sentencing documents" e.g., the guilty plea hearing, as documents that can be authorized by the court.[4]

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The current version of §217.305 is even more expansive as it requires that "all other judgment, sentencing and commitment documents" be delivered to the Department.

Even if this Court were to accept the Department's position that it is restricted to the written judgments, Mr. LaChance is still entitled to a writ of mandamus (or a conversion back to a writ of habeas corpus) requiring the Department to release him immediately. The St. Louis County Circuit Court entered three written judgments on its three cases. All three judgments expressed how the sentences in the judgments should run in relation to each other and in relation to the sentences in the St. Louis City cases. The written judgment in 96CR-1602 indicates that all sentences in all cases should run concurrently for a total of seven years imprisonment. If the Department is restricted to the written judgment only, then it must immediately release Mr. LaChance as his seven year term ended on May 17, 2003. That the two other judgments entered that day would lead to a seventeen year sentence is of no consequence as those judgments are contradicted by the judgment in 96 CR-1602. There is no way to reconcile the judgments. Either they all run together for a seven year sentence or the St. Louis County sentences run consecutively with the St. Louis City sentences for seventeen years. As this Court recently explained "[t]he rule of lenity gives a criminal defendant the benefit of a lesser penalty where there is an ambiguity in the statute [or presumably judgments] allowing for more than one interpretation." *State v. Rowe*, 63 S.W.3d 647, 650 (Mo. banc 2002). In this case there are two equally valid interpretations of the St. Louis County's judgments if looking solely to the written judgments. Mr. LaChance was to serve either seven years or seventeen years. The rule of lenity mandates that the

Department "give the defendant the benefit of the lesser penalty" rather than arbitrarily choosing the longer sentence.

CONCLUSION

For all of these reasons, Mr. LaChance requests that the Court issue a writ of mandamus to the Department of Corrections ordering it to modify its internal records to indicate an aggregate thirteen year sentence rather than a seventeen year sentence. Alternatively, the Court should issue a writ of mandamus to the department of Corrections ordering it to immediately release Mr. LaChance as he has served his seven year sentence.

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ATTORNEY'S RULE 84.06(c)
CERTIFICATE AND CERTIFICATE OF SERVICE

Pursuant to Rule 84.06(c), I certify:

1. The brief filed on behalf of petitioner complies with the requirements of Rule 84;

2. The brief complies with the limitations contained in Rule 84; and

3. The brief contains 2632 words.

4. An electronic copy of the brief is in the enclosed floppy disk, and both the disk and the files have been scanned for viruses and are virus-free.

Two copies of the brief, and a duplicate floppy disk, have been served on June 2, 2003 to: Mr. Stephen D. Hawke, Office of Missouri Attorney General, P.O. Box 899, Jefferson City, MO 65102.

Respectfully submitted,

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